

SENATE BILL NO. 306

INTRODUCED BY ESP, MCGEE, TUTVEDT

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING CRITERIA FOR THE DETERMINATION OF A REMAINDER; DEFINING "REMAINDER"; AND AMENDING ~~SECTION~~ SECTIONS 76-3-103 AND 76-3-609, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Creation of remainder.~~ (1) A subdivision may not create more than one remainder ~~ONLY ONE REMAINDER MAY BE CREATED FROM A SUBDIVISION OR THE USE OF AN EXEMPTION UNDER 76-3-201 OR 76-3-207.~~

~~(2) A remainder:~~

~~(a) may not be created for the purpose of immediate transfer SALE, LEASE, OR CREATING A SECURITY INTEREST UNDER 76-3-201(1)(B); and~~

~~(b) must be retained by the landowner for a minimum of 1 year 18 MONTHS following the filing of the final plat of the subdivision or certificate of survey.~~

~~(3) The governing body or its designated agent shall determine whether or not a proposed remainder meets the requirements of this section during the preapplication process established pursuant to 76-3-504(1)(q). The determination must be based on a demonstration by the subdivider that one or more of the following criteria are met:~~

~~(a) the remainder is 160 acres or larger in size or can be described as a one-quarter aliquot part of a United States government section;~~

~~(b) the subdivider resides SUBDIVIDER'S PRIMARY RESIDENCE IS on the remainder;~~

~~(c) the subdivider has a substantial investment in an ongoing agricultural or business operation on the remainder; REMAINDER IS TAXED FOR AGRICULTURAL PURPOSES UNDER TITLE 76, CHAPTER 2, PART 9; OR~~

~~(d) the remainder is part of a phased development plan that has been approved by the governing body; or;~~

~~(e) the remainder has minimal relation to the subdivision lots in regard to size, configuration, road access, common facilities, or covenants.~~

~~———— (4) If the determination in subsection (3) is made by a designated agent of the governing body, the subdivider may appeal the decision to the governing body by submitting an appeal with the preliminary plat application. If an appeal is submitted, the governing body shall make a final determination using the criteria in subsection (3).~~

~~———— (5) Prior to the transfer or conveyance of an unsurveyed remainder, the parcel must be surveyed and the survey filed with the county clerk and recorder unless the remainder can be described as a an aliquot part of a United States government section.~~

~~———— (6) A remainder may be created through the use of an exemption under 76-3-201 or 76-3-207.~~

NEW SECTION. SECTION 1. CREATION OF REMAINDER. (1) (A) REMAINDERS ARE NOT AUTHORIZED IN A JURISDICTIONAL AREA UNLESS A GOVERNING BODY PASSES AN ORDINANCE OR RESOLUTION THAT ALLOWS THE USE OF REMAINDERS IN THE GOVERNING BODY'S JURISDICTIONAL AREA.

(B) ONLY ONE REMAINDER MAY BE CREATED ON A SUBDIVISION PLAT OR A CERTIFICATE OF SURVEY DEPICTING AN EXEMPTION UNDER 76-3-201 OR 76-3-207.

(C) A REMAINDER MAY BE CREATED THROUGH THE USE OF AN EXEMPTION UNDER 76-3-201 OR 76-3-207. A PARCEL CREATED PURSUANT TO 76-3-209 IS NOT A REMAINDER UNDER THIS SECTION.

(2) A REMAINDER:

(A) MAY NOT BE CREATED FOR THE PURPOSE OF SALE, LEASE, OR CREATING A SECURITY INTEREST UNDER 76-3-201(1)(B);

(B) MUST BE RETAINED BY THE LANDOWNER FOR A MINIMUM OF 18 MONTHS FOLLOWING THE FILING OF THE FINAL PLAT OF THE SUBDIVISION OR CERTIFICATE OF SURVEY DEPICTING THE EXEMPTION UNLESS THE REMAINDER IS FURTHER DIVIDED PURSUANT TO THE REQUIREMENTS OF THIS CHAPTER; AND

(C) IS SUBJECT TO APPLICABLE ZONING REGULATIONS ADOPTED PURSUANT TO TITLE 76, CHAPTER 2.

(3) (A) THE GOVERNING BODY OR ITS DESIGNATED AGENT SHALL DETERMINE WHETHER A PROPOSED REMAINDER MEETS THE REQUIREMENTS OF THIS SECTION DURING:

(I) THE PREAPPLICATION PROCESS ESTABLISHED PURSUANT TO 76-3-504(1)(Q);

(II) THE REVIEW PROCEDURE FOR A MINOR SUBDIVISION PURSUANT TO 76-3-609; OR

(III) THE PROCEDURE USED TO DETERMINE WHETHER A PROPOSED METHOD OF DISPOSITION USING THE EXEMPTIONS PROVIDED IN 76-3-201 OR 76-3-207 IS AN ATTEMPT TO EVADE THE REQUIREMENTS OF THIS CHAPTER PURSUANT TO CRITERIA ADOPTED UNDER 76-3-504(1)(P).

(B) THE DETERMINATION MUST BE BASED ON A DEMONSTRATION BY THE APPLICANT THAT ONE OR MORE OF THE FOLLOWING CRITERIA ARE MET:

(I) THE REMAINDER IS 160 ACRES OR LARGER IN SIZE OR CAN BE DESCRIBED AS A ONE-QUARTER ALIQUOT PART OF A UNITED STATES GOVERNMENT SECTION;

(II) THE APPLICANT'S PRIMARY RESIDENCE IS ON THE REMAINDER;

(III) THE PROPOSED REMAINDER IS TAXED FOR AGRICULTURAL PURPOSES UNDER 15-7-202 OR AS FOREST LAND UNDER TITLE 15, CHAPTER 44, PART 1. A REMAINDER CREATED BY A SUBDIVISION UNDER THIS SUBSECTION (3)(B)(III) MAY NOT BE DEVELOPED UNTIL IT HAS BEEN REVIEWED AND APPROVED AS A SUBDIVISION UNDER PARTS 5 AND 6 OF THIS CHAPTER. A REMAINDER CREATED BY AN EXEMPTION UNDER THIS SUBSECTION (3)(B)(III) MAY BE DEVELOPED WITH ONE SINGLE-FAMILY RESIDENCE FOLLOWING THE FILING OF A SURVEY UNDER PART 4 OF THIS CHAPTER AND REVIEW UNDER CHAPTER 4.

(IV) THE REMAINDER IS PART OF A PHASED DEVELOPMENT PLAN FOR WHICH AN APPLICATION HAS BEEN SUBMITTED UNDER PARTS 5 AND 6 OF THIS CHAPTER. A REMAINDER UNDER THIS SUBSECTION (3)(B)(IV) DOES NOT BECOME EFFECTIVE UNTIL A FINAL PLAT FOR THE PHASED SUBDIVISION HAS BEEN FILED PURSUANT TO THE REQUIREMENTS OF THIS CHAPTER. A REMAINDER CREATED UNDER THIS SUBSECTION (3)(B)(IV) MAY NOT BE DEVELOPED UNTIL IT HAS BEEN REVIEWED AND APPROVED AS A SUBDIVISION UNDER PARTS 5 AND 6 OF THIS CHAPTER.

(4) IF THE DETERMINATION IN SUBSECTION (3) IS MADE BY A DESIGNATED AGENT OF THE GOVERNING BODY, THE APPLICANT MAY APPEAL THE DECISION TO THE GOVERNING BODY. IF AN APPEAL IS SUBMITTED, THE GOVERNING BODY SHALL MAKE A FINAL DETERMINATION USING THE CRITERIA IN SUBSECTION (3).

(5) PRIOR TO THE TRANSFER OR CONVEYANCE OF AN UNSURVEYED REMAINDER, THE PARCEL MUST BE SURVEYED AND THE SURVEY MUST BE FILED WITH THE COUNTY CLERK AND RECORDER UNLESS THE REMAINDER CAN BE DESCRIBED AS AN ALIQUOT PART OF A UNITED STATES GOVERNMENT SECTION.

Section 2. Section 76-3-103, MCA, is amended to read:

"76-3-103. Definitions. As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for

1 infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain
2 undeveloped.

3 (3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use,
4 reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use
5 to which the property has been devoted.

6 (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in
7 single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the
8 tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels
9 pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a
10 previous division of land is not a division of land.

11 (5) "Examining land surveyor" means a registered land surveyor appointed by the governing body to
12 review surveys and plats submitted for filing.

13 (6) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be
14 prepared for filing for record with the county clerk and recorder and containing all elements and requirements set
15 forth in this chapter and in regulations adopted pursuant to this chapter.

16 (7) "Governing body" means a board of county commissioners or the governing authority of a city or town
17 organized pursuant to law.

18 (8) "Immediate family" means a spouse, children by blood or adoption, and parents.

19 (9) "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

20 (10) "Planned unit development" means a land development project consisting of residential clusters,
21 industrial parks, shopping centers, or office building parks that compose a planned mixture of land uses built in
22 a prearranged relationship to each other and having open space and community facilities in common ownership
23 or use.

24 (11) "Plat" means a graphical representation of a subdivision showing the division of land into lots,
25 parcels, blocks, streets, alleys, and other divisions and dedications.

26 (12) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout
27 of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a governing
28 body.

29 (13) "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this chapter,
30 the term includes county or consolidated city and county water or sewer districts as provided for in Title 7, chapter

13, parts 22 and 23.

~~(14)~~ "Remainder" means a parcel created by the segregation of a subdivision from WHEN A SUBDIVISION PLAT IS FILED FOR PART OF a larger tract of record or a parcel created through the use of an exemption under 76-3-201 or 76-3-207 PURSUANT TO [SECTION 1].

~~(14)~~(15) "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision of land.

~~(15)~~(16) "Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

~~(16)~~(17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office.

(b) Each individual tract of record continues to be an individual parcel of land unless the owner of the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

(i) an instrument of conveyance in which the aggregated parcels have been assigned a legal description that describes the resulting single parcel and in which the owner expressly declares the owner's intention that the tracts be merged; or

(ii) a certificate of survey or subdivision plat that shows that the boundaries of the original parcels have been expunged and depicts the boundaries of the larger aggregate parcel.

(c) An instrument of conveyance does not merge parcels of land under subsection ~~(16)(b)(i)~~ (17)(b)(i) unless the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."

SECTION 3. SECTION 76-3-609, MCA, IS AMENDED TO READ:

"76-3-609. Review procedure for minor subdivisions -- determination of sufficiency of application -- governing body to adopt regulations. (1) Minor subdivisions must be reviewed as provided in this section

1 and subject to the applicable local regulations adopted pursuant to 76-3-504.

2 (2) If the tract of record proposed to be subdivided has not been subdivided or created by a subdivision
3 under this chapter or has not resulted from a tract of record that has had more than five parcels created from that
4 tract of record under 76-3-201, ~~or~~ 76-3-207, or [section 1] since July 1, 1973, then the proposed subdivision is
5 a first minor subdivision from a tract of record and, when legal and physical access to all lots is provided, must
6 be reviewed as follows:

7 (a) Except as provided in subsection (2)(b), the governing body shall approve, conditionally approve, or
8 deny the first minor subdivision from a tract of record within 35 working days of a determination by the reviewing
9 agent or agency that the application contains required elements and sufficient information for review. The
10 determination and notification to the subdivider must be made in the same manner as is provided in 76-3-604(1)
11 through (3).

12 (b) The subdivider and the reviewing agent or agency may agree to an extension or suspension of the
13 review period, not to exceed 1 year.

14 (c) Except as provided in subsection (2)(d)(iii), an application must include a summary of the probable
15 impacts of the proposed subdivision based on the criteria described in 76-3-608(3).

16 (d) The following requirements do not apply to the first minor subdivision from a tract of record as
17 provided in subsection (2):

18 (i) the requirement to prepare an environmental assessment;

19 (ii) the requirement to hold a hearing on the subdivision application pursuant to 76-3-605; and

20 (iii) the requirement to review the subdivision for the criteria contained in 76-3-608(3)(a) if the minor
21 subdivision is proposed in the portion of a jurisdictional area that has adopted zoning regulations that address
22 the criteria in 76-3-608(3)(a).

23 (e) The governing body may adopt regulations that establish requirements for the expedited review of
24 the first minor subdivision from a tract of record. The following apply to a proposed subdivision reviewed under
25 the regulations:

26 (i) 76-3-608(3); and

27 (ii) the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.

28 (3) Except as provided in 76-3-616 and subsection (4) of this section, any minor subdivision that is not
29 a first minor subdivision from a tract of record, as provided in subsection (2), is a subsequent minor subdivision
30 and must be reviewed as provided in 76-3-601 through 76-3-605, 76-3-608, 76-3-610 through 76-3-614, and

1 76-3-620.

2 (4) The governing body may adopt subdivision regulations that establish requirements for review of
3 subsequent minor subdivisions that meet or exceed the requirements that apply to the first minor subdivision, as
4 provided in subsection (2) and this chapter.

5 (5) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may
6 occur only under those regulations in effect at the time that a subdivision application is determined to contain
7 sufficient information for review as provided in subsection (2).

8 (b) If regulations change during the period that the application is reviewed for required elements and
9 sufficient information, the determination of whether the application contains the required elements and sufficient
10 information must be based on the new regulations."

11
12 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
13 integral part of Title 76, chapter 3, and the provisions of Title 76, chapter 3, apply to [section 1].

14
15 COORDINATION SECTION. SECTION 5. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 522 IS PASSED
16 AND APPROVED, THEN ANY REFERENCE IN [THIS ACT] TO 76-3-201(1)(B) MUST BE REPLACED BY A REFERENCE TO
17 [SECTION 1 OF HOUSE BILL 522].

18 - END -